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Transnational Criminal Law in Transatlantic Perspective (1870–1945): Introductory Notes, Initial Results and Concepts

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Abstract

The article outlines the scope and concepts of the research project »Transnational Criminal Law in Transatlantic Perspective (1870–1945)« and introduces the respective case studies of the Focus. Although research has studied the history of crime, criminal justice, policing and punishment in Latin America, the transatlantic dimension of transnational criminal law has still to be explored by legal history. This could be achieved by applying the concepts of »historical regimes of normativity« and »global legal history« integrating as well approaches of »critical criminology« and »criminal selectivity«. This conceptional framework allows to study the transatlantic dimension of transnational crime, norms, discourses and practices as the formation of a transnational regime. In this regime not only states but also non-governmental actors from the Global North and the Global South played a vital role, exchanged and created legal knowledge and normativity as well as narratives of »international crime« which also had an impact on the respective domestic levels of criminal law, criminalisation, policing and criminal justice. In this regard, research on the formation of transnational-transatlantic criminal law regimes could gain new insights in the legal history of criminal law as well as to current issues of the global governance of crime.

Keywords: transatlantic history, transnational criminal law, international crime, regimes of normativity, critical criminology

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Karl Härter, Valeria Vegh Weis

Transnational Criminal Law in Transatlantic Perspective (1870–1945): Introductory Notes, Initial Results and Concepts

I. Introduction: Transnational Criminal Law

With the global turn of legal history,[1] researchers have also developed an interest in transnational criminal law, which from a historical perspective can be defined as a »system that attempts to suppress harmful activity that crosses borders or threatens to do so«.[2] It covers various types of crimes with a transboundary effect, is based on transnationally agreed norms and principles as well as on national criminal law, and the states or jurisdictions involved use a variety of transboundary procedures and practices »against harmful activity that affects a given state but occurs in part or whole beyond the state's territory«.[3] Hence, transnational criminal law involved a broad variety of organisations and actors from empires, nation-states and governments to semi- or non-state actors, experts and practitioners.

Whereas the history of modern international criminal law is mostly concerned with war crimes, crimes against humanity, genocide and the establishment of the respective international criminal tribunals from World War II onwards, transnational criminal law has a legal history that dates back to the *ius commune* era and covers a much broader range of norms, crimes, procedures and practices that involve a transboundary dimension. The transnationalisation of criminal law commenced with the French Revolution and lasted over the course of the long nineteenth century up to World War II. It led to the emergence of modern transnational criminal law and related specific regimes that aim at the governance of international crime in the global world.[4]

However, research often focuses on Europe or the more powerful states, whereas the transatlantic dimension of transnational criminal law – and Latin America in particular – constitutes a research field still to be explored by legal history. Therefore, the research project ›Transnational Criminal Law in Transatlantic Perspective (1870–1945)‹ aspires to develop new approaches to the history of transnational criminal law that aim towards a transatlantic dialogue between the Global North and the Global South. This includes a broad range of topics with a particular relevance for Latin American countries, comprising international crimes such as ›anarchist violence‹, ›trafficking of women‹ and ›counterfeiting currency‹, the negotiations of extradition treaties and international suppression conventions, the participation in international conferences and organisations, mutual legal assistance, and cooperation in matters of policing and prosecution as well as the circulation of knowledge in internal discourses of criminal jurisprudence and criminology.

II. Histories of Transnational Criminal Law in Latin America

Some of the topics mentioned above have already been studied as part of the burgeoning research in Latin America on the history of crime, criminal justice, policing and punishment.[5] This has also explored the transatlantic dimension of the transnationalisation of criminal law from the mid-19th to the mid-20th century, in particular:
– the impact of penal codes (especially the French *code pénal*) on the codification of criminal law in Latin American countries;[6]

1 Duve (2016); Duve (2020).
2 Boister (2018) 1.
3 Boister / Currie (2015) 2.
4 Härter / Hannappel / Tyrichter (eds.) (2019); Boister / Gless / Jessberger (eds.) (2021).
5 On the state of research, see Salvatore (1998); Salvatore / Aguirre / Joseph (eds.) (2001); Salvatore / Barreneche (eds.) (2013); Caimari / Sozzo (eds.) (2017); Barreneche (2015); Núñez / González Alvo (2015).
6 Nunes (2018); Agüero / Rosso (2018); Sontag (2014); Duve (1999).

– the importance of criminal jurisprudence, doctrine and criminology, and the participation of Latin American experts in the respective expert discourses;[7]
– the history of transboundary and international crimes, particularly ›anarchist violence‹,[8] ›travelling criminals‹[9] and the ›white slave trade‹;[10]
– the implementation of new methods of policing and identification systems[11] and the establishment of transboundary police cooperation;[12]
– extradition treaties concluded by Latin American countries and the related circulation of transnational criminal law in juridical discourses and international associations.[13]

These pioneering studies demonstrate that, first, issues of transnational criminal law gained in importance in the legal culture of Latin America from the second half of the 19th century onwards.[14] Second, Latin American countries and actors clearly played an active role within these transatlantic developments and were not merely recipients of European knowledge. Their increasing participation in transnational criminal law was not only motivated by the intention to belong to the ›civilised‹ world of political powers and international law,[15] but was also rooted in the tradition of *ius commune* that was still present in most Latin American legal systems and might have influenced the concepts of transnational criminal law.[16]

With the revolutions of 1848/49 and the beginning of the constitutional period in Latin America, the increase in migration from Europe and the growth of transnational trade, international political movements and dissent were increasingly perceived as cross-border, transatlantic threats, which – from the viewpoint of the elites – could endanger order and security.[17] As a consequence, these threats were also labelled as international crimes which transnational criminal law commenced to criminalise with ambiguous concepts such as ›anarchist violence‹, ›white slave trade‹ (trafficking of women), illegal migration and ›travelling criminals‹. From a historical perspective, ›transnational crime‹ refers to different types of criminal activities as well as to specific ›international perpetrators‹ and ›networks of organised crime‹ that operated in secret and across borders to elude national prosecution. This extends to criminal activities that had a cross-border dimension, a foreign connection or a transboundary effect, such as illegal migration, smuggling (drugs, weapons, counterfeit money) and human trafficking as well as various forms of political crime. Regarding the latter, political subversion, protest and revolts in which immigrants or indigenous groups participated gained in importance. American governments perceived the political activities of immigrant or indigenous groups to a certain extent as a transnational threat to the domestic political order and national security because they considered them to be stimulated or incited by international socialist, communist or anarchist ideologies and movements.[18]

Cross-border crime also became an important topic of transnational juridical-political and criminological discourses, in which experts from Europe and the Americas discussed concepts of international crime and related security measures within the framework of transnational criminal law, and in this respect also created labels and narratives of travelling criminals, organised crime and international habitual / professional offenders (*internationale Berufsverbrecher*) and ›dangerousness‹.[19] Recent research has demonstrated that actors from Latin America increasingly participated in these international juridical-political expert discourses and international organisations, particularly in the *Institut de Droit International* (1873), the *International Union of Penal Law* (1889) and, finally, the League of Nations.[20] Furthermore, Latin American countries and experts attended international congresses that developed as key arenas of transnational criminal law. These dealt with techniques of crime control, criminology and policing, all of which gained in importance for Latin America.[21]

7 Olmo (1981); Olmo (1999); Salvatore (2006); Salvatore (2018); Fonseca Rosenblatt / Mell (2018).
8 Albornoz (2017); Albornoz / Galeano (2017).
9 Galeano (2018).
10 Guy (1988); Fischer (2003); Trochon (2006); Ventura (2016); see also the contribution of Paul Knepper in this *Focus*.
11 Galeano / García Ferrari (2011a); Galeano / García Ferrari (2011b); García Ferrari / Galeano (2016); García Ferrari (2016b).
12 Galeano (2009); Galeano (2016); Galeano (2012); Duffau (2017).
13 Yáñez Andrade (2011); Härter (2019b).
14 Sozzo (2011).
15 Obregón (2006); Obregón (2017).
16 Härter (2021).
17 Knepper (2010); Knepper (2011).
18 Albornoz (2017).
19 Pifferi (2016); Härter (2020).
20 Fischer (2012); Scarfi (2017).
21 See the contribution of Elizabeth Gómez Alcorta in this *Focus*.

As early as 1885 and 1889, actors from Latin American countries participated in the first and second congresses of criminal anthropology in Rome and Paris, and brought the new concepts and techniques of criminology and crime control to Latin America, where this knowledge spread to various countries. On the one hand, this transnational circulation of knowledge had an impact on the various countries' domestic policing; for instance, after an office of anthropometric identification was established in 1889 in Buenos Aires, similar institutions were quickly set up in Uruguay, Brazil, Mexico, Ecuador, Peru, and Chile. On the other, it also stimulated the trend to develop transboundary police cooperation. A pivotal actor in this field was Juan Vucetich, an immigrant from the Habsburg Empire who had entered the Argentinian police services in 1888, adapted the Bertillonage method of anthropometric identification and developed fingerprint classification (dactyloscopy). This improved technique of identification and registration not only served national crime control, but was also adopted as a crucial technique of transnational policing, migration control and the prosecution of trans- and international crimes.[22] In general, transboundary security measures of transnational criminal law that included penal transportation/deportation, expulsion, extradition and police cooperation were implemented and used in many Latin American countries.[23]

Although the impact of transnational discourses and concepts on criminology, law-making, policing, punishment and state building in Latin America has been studied,[24] the implementation of the ambiguous concepts and narratives of ›transnational‹ or ›international crime‹ on the domestic level of criminalisation, policing and criminal justice in Latin American countries still needs further research from the perspective of critical criminology, particularly regarding indigenous groups and political movements.

In many Latin American countries, both the actual threats and the narratives of international crime – particularly of anarchist violence – were closely intertwined with transnational policing, expulsion and extradition. For instance, Argentina and Italy established a transatlantic police cooperation to monitor Italian anarchists who had migrated to Argentina. The cooperation was not only aiming at the prevention of political violence (›terrorism‹), but, to some extent, included the exchange of intelligence as well as the monitoring of transatlantic migration.[25] These activities were part of an overall rise of South American police cooperation in the second half of the 19th century and increased on the international level between 1905 and 1920, which was related to similar developments in Europe.[26] Already a cursory glance at the international police conferences in Monaco (1914), Vienna (1923) and Berlin (1926) reveals the importance of transnational criminal law and transatlantic relations. Topics such as expulsion, extradition and the creation of international criminal registers (also by using the records of criminal courts) were discussed at length, as well as ›international crime‹ and ›transnationally operating and organised criminals‹, who were perceived as a new kind of threat to international as well as national security. At the *First International Criminal Police Congress* in Monaco in 1914, delegates from Brazil, Cuba, Guatemala, Mexico and San Salvador participated; representatives from Argentina, Bolivia, Brazil, Cuba and Peru were present in Berlin in 1926. However, little is known about the role of these delegates, what they reported back to whom in their respective countries, and how this might have influenced policing and security discourses in Latin America.

Actors from Latin America not only participated in European-based discourses, organisations and conferences but also themselves organised activities in the field of transnational criminal law. From 1877 to 1914, several Latin and Pan-American congresses, conventions and collaborations dealt with issues of transnational criminal law, extradition and policing in the Americas and

22 Galeano / García Ferrari (2011a); Galeano / García Ferrari (2011b); García Ferrari / Galeano (2016); García Ferrari (2016b).

23 See, for example, Salvatore / Aguirre (2016); Albornoz / Galeano (2016); Duffau (2017).

24 Aguirre (1998); Dias (2016); Sozzo (2017); Salvatore (2006); Salvatore (2018); Fonseca Rosenblatt / Mell (2018).

25 Jensen (2015); see also the article by Nicolás Duffau in this *Focus*.

26 Schettini (2017); Galeano (2009); Galeano (2012).

beyond, including the transatlantic threat of anarchist violence.[27] After the *International Anti-Anarchist Conference* in Rome (1898), the *Second Pan-American Conference* (Mexico 1901–1902) concluded the *Tratado de Extradición y Protección contra el Anarquismo*.[28] This was not only the first multilateral extradition treaty worldwide, but also comprised the ›anarchist clause‹ that excluded anarchist acts and violent political crimes from the political offence exception (and therefore political asylum) and defined them as extraditable transnational crimes. Although the *Institut de Droit International* and the *International Anti-Anarchist Conference* had already proposed such a provision in 1880 and 1898, based on the Belgian assassination clause, it was the Latin American states that implemented it in transnational criminal law.[29] Already in 1897, Brazil and Chile had concluded a treaty that comprised the clause, and Paraguay successfully implemented it in the extradition treaty it concluded with Germany in 1909. This example demonstrates that states and actors in Latin America were not only well aware of the discourses and concepts developed by international associations; they even pioneered the adoption of notions of transnational crime and the anarchist clause years before European states implemented them. Although the German Empire had promoted the international fight against anarchism since the late 19th century, it was the extradition treaty with Paraguay that introduced the anarchist clause into German transnational law.[30]

Already since the 1850s, we can observe the increasing importance of extradition as an essential component of transnational criminal law, manifesting in various extradition treaties that Latin American and European countries concluded, as, for instance, Brazil (1877), Uruguay (1880) and Paraguay (1909) with Germany. The provisions listed forgery and fraudulent distribution of official documents (passports etc.) or counterfeit money, criminal acts committed by ship captains and crews, piracy, child abandonment, formation of criminal gangs, procuring of minors, bribery of public officials, and damaging of public transport and public facilities as having a transboundary dimension and affecting international security.[31] Thus, they were not only stipulated as extraditable crimes but also required some kind of transboundary cooperation such as immediate provisional arrest in urgent cases, the exchange or delivery of evidence and witnesses, the exchange of verdicts and practical implementation measures. As a consequence, the treaties both established practices of mutual legal assistance and influenced the practices of transnational policing.

Similar to police agencies in Europe, several states in Latin American (in particular Argentina, Brazil and Uruguay) started to build a network of police cooperation that culminated in the police conferences held in 1905, 1912 and 1920, two of them referred to as *Conferencia Internacional de Policía*. Like the *International Police Conferences* in Europe in 1914, 1923 and 1926, the Latin American conferences dealt with various issues of police cooperation, extradition, and international crime.[32] Moreover, at the *Congreso Científico Internacional Americano* (Montevideo 1901), the inventor of dactyloscopy, Juan Vucetich, propagated an international police cooperation based on his new identification system. The next *Congreso Científico Internacional Americano* (Buenos Aires 1910) followed this path and discussed cross-border crime, ›travelling criminals‹ and the foundation of a Universal Police Union, proposed by Vucetich's student Luis Reyna Almandos. The interrelations between the various international, Latin American and European conferences – and the ones organised in the same period in the US – have not been explored in detail, and little is known about how they influenced transatlantic criminal law.[33]

III. Further Research and Initial Results

As briefly outlined, existing research has already yielded important results, but pertinent aspects of the transatlantic dimension of transnational criminal law still require further interdisciplinary study. The application of integrative concepts, particularly regime theory and critical criminology, would enable further clarification of the historical role / function of the ›Global South‹ (and Latin America in particular) within the emerging transnational criminal law regimes and the global governance of transnational crime in the crucial period between

27 For an overview, see Inman (1965).
28 Yáñez Andrade (2011); Jensen (2014); Jensen (2015).
29 Nunes (2019).
30 Härter (2019b).
31 Härter (2019b).
32 Galeano (2009).
33 García Ferrari (2016a); García Ferrari (2016b).

the middle of the 19th century and World War II. The research project ›Transnational Criminal Law in Transatlantic Perspective (1870–1945): Towards a dialogue between the Global North and the Global South‹ intends to overcome the current gaps in this area of research by exploring the historical context of transnational crimes and transnational criminal law regimes, and by clarifying how the historical links between European and Latin American legal frameworks operated in terms of crime and criminal law, justice and punishment. Based on these initial considerations and the state of research, the papers presented at the workshop ›Transnational Criminal Law in Transatlantic Perspective (1870–1945)‹ further explored the transatlantic dimensions of transnational criminal law.[34] Three of these are published in this *Focus* and provide exemplary case studies.

In her closer look at international criminological congresses held between 1870 and 1945, Elizabeth Gómez Alcorta studies different issues of transnational criminal law and their impact on penal law in Latin America. Even when they were announced as ›transnational‹, most of these congresses were carried out almost entirely in Europe and followed a European agenda. To rectify this misleading image, Gómez Alcorta examines both the topics discussed at the conferences and the Latin American delegates' role at them in order to investigate the actual emergence of transnational interactions and draw first conclusions about the consequences and impact of these congresses in Latin America. Her study analyses the congresses' impact on domestic legislation with a focus on how ›dangerousness‹ was incorporated in the discursive and normative framework they created. The chapter shows that despite the cultural diversity of each of the countries or regions, these meetings became tools for the universalisation of norms, ranging from legislative proposals linked to the ›social question‹ to criminal procedure and the penal and penitentiary system. At the same time, the study examines the role played by a certain part of the scientific elite in Central Europe in the discursive elaboration that would become dominant in criminology in the late 19th and early 20th centuries. Finally, Gómez Alcorta asks whether the construction of ›dangerousness‹ as a cross-border legal-political concept could constitute a tool for global governance and explores its extensive reception in Latin America as an instrument of social and criminal control. Overall, her contribution demonstrates the impact of transnational criminal law regimes in Latin America and thus contributes to seeing crime and criminals in a historical and transatlantic perspective.

The article by Nicolás Duffau analyses the ›Volpi-Patroni Case‹ (1882) as an example for the transnational regime of Italian immigration, crime, and police actions in Uruguay. Raffaele Volpi and Vicenzo Patroni – Italian immigrants unfairly accused of murder – were tortured by the Uruguayan police. As a result, the Kingdom of Italy suspended diplomatic relations with the Republic of Uruguay in March 1882. At that time, criminals and marginalised people were frequently stigmatised and persecuted by the authorities, who accused them of blocking the political and cultural development of ›modern‹ Uruguay. Through the historical analysis of the Patroni-Volpi case and its broad press coverage and transnational dimension, Duffau examines the complex process of social identity formation in the period of immigration and the inclusion of foreigners into the Uruguayan society in the late 19th century and thus demonstrates the interdependencies between transnational criminal law and migration regimes.

Exploring the regime that the League of Nations established to fight the international crime of the ›white slave trade‹ (traffic in women), Paul Knepper also demonstrates the transnationalisation of criminal law. During the 1920s, the League of Nations sent undercover researchers into more than a hundred cities across Europe, North and South America as part of the first ›worldwide‹ investigation into the traffic in women. The League's investigation illustrates the transnationalisation of criminal law. John D. Rockefeller, Jr., who funded the project, had the idea for an undercover inquiry before the First World War. His role demonstrates the ›entangled history‹ of trafficking. Grace Abbott, the American representative to Geneva, organised an inquiry that displays multiple characteristics of transnational law regimes. One of the first assignments to the researchers was to investigate reports of a plot to send several hundred women aboard a single ship from Germany to South American brothels. This report,

34 Workshop (2019).

which turned out to be false, had such importance because it referenced the white slave trade narrative as part of the wider cultural, political, and social contexts in which transnational law regimes operate. Another report of a New York theatrical agent believed to have trafficked several hundred women to Panama, demonstrates the meanings of ›transnational criminal‹ and ›transnational crime victim‹.

IV. Approaches and Concepts: Transnational Regimes and Global Legal History

The broad range of topics as well as the transatlantic dimension of transnational crime call for an interdisciplinary approach and sophisticated concepts. Overall, the project on ›Transnational Criminal Law in Transatlantic Perspective (1870–1945)‹ aims to apply the concepts of historical regimes of normativity and global legal history. From a methodological perspective, both interdisciplinary and inter-regional research are core elements of the project. Complex global and transnational phenomena require refined interdisciplinary analyses, which can only be achieved through the collaborative work of researchers coming from different disciplinary backgrounds, in this case legal and social history, criminology, international law, political science and sociology. In particular, understanding criminal justice systems not only from a normative perspective but through the concepts of ›practices‹, ›normative knowledge‹ and ›regimes‹ allows for a multidimensional understanding of the diverse phenomena of transnational crime and criminal law that have been mostly studied by scholars from the Global North. Thus, research should not only incorporate scholars from the Global South to think through these topics; it should also foster a collaborative dialogue between academics from both sides of the globe. In this regard, transnational criminal law constitutes an important topic of historical regimes of normativity and global legal history, the latter understood as »legal history in a global perspective […] especially interested in the reconstruction of the historical interaction between actors and actants – often remote from one another – or even in the interaction between members of different historiographic communities«.[35]

From the viewpoint of historical regimes of normativity, transnational criminal law hardly forms a coherent international normative order based on the rule of law, but can rather be conceptualised as a historically changing, flexible criminal law regime which developed mechanisms for the global governance of crime and punishment. Transnational regimes can be defined as more or less stabilised historical arrangements or agglomerations of norms, discourses and practices, in which a broad variety of actors from more than one state or jurisdiction respond to specific threats or a particular complex of problems, form a particular field of action and pursue general purposes such as ›security‹ or the ›governance of crime‹.[36] The regime concept enables a »form of observation to overcome the basic model of legal history centred on the nation-state […] and understands norms as part and product of historically consolidated structures (therefore, normativity regimes)«.[37] Regime theory was developed in the context of international law and relations[38] and is thus particularly appropriate for analysing the history of transnational criminal law as the evolution of a legal framework that extended to international, multilateral and national levels.[39] Transnational criminal law regimes can further be differentiated with regard to their various levels and actors, by considering the interdependencies of international, transnational and national levels on which laws, discourses and practices could be interpreted differently or serve different purposes and functions. Furthermore, transnational regimes involve various judicial and administrative, formal and informal transboundary procedures and practices and are therefore also characterised by legal pluralism, multinormativity, legal collisions and conflicts of jurisdiction.

The formation of transnational criminal law regimes in the second half of the 19th century involved a multiplicity of legal norms (ranging from international suppression conventions and

35 Duve (2018).
36 Härter (2011); Härter (2013).
37 Historical Regimes of Normativity – Part 1 (2021).
38 Haggard / Simmons (1987); Zangl (2006).
39 Boister / Gless / Jessberger (2021) 2.

bilateral treaties to national criminal law), international discourses and congresses, and various cross-border public / governmental institutions and non-state actors, experts and practitioners. International organisations such as the *Institut de Droit International*, the *International Union of Penal Law* and the *League of Nations* as well as a variety of different conventions such as the *International Prison Congresses* (1872, 1895), the *International Congress on Prostitution* (1877), the conferences of the *International Abolitionist Federation* (since 1878), the *Criminal Anthropology Conferences* (since 1885), the *International Congresses on the White Slave Trade* (1899, 1904, 1910), the *International Anti-Anarchist Conferences* (1898, 1904), the *Pan-American Conference* (1901/02), the *Congreso Sudamericano de Derecho Internacional* (1888/89), the *International Conference of American States* (1889/90), the *Congresos Científicos Internacionales Americanos* (1901, 1905, 1910), the *Conferencia Internacional de Policía* (1905) and the *International Police Congresses* (1909, 1912, 1914) periodically dealt with various matters of transnational crime and criminal law. In all of them, governmental and non-governmental experts, jurists, committees, associations from the Global North and the Global South participated, exchanged experiences and knowledge and influenced normativity and narratives.[40]

As stabilised historical arrangements or agglomerations of norms, discourses and practices, these transnational regimes (or their various manifestations) dealt with international crimes, criminals and threats (or narratives thereof) that were of high importance for the countries / actors involved and also implied a transatlantic dimension. Specific regimes evolved for several international / transnational crimes, such as for the trafficking of slaves and women, anarchism and political crime, drug trafficking, the smuggling of counterfeit currency and illicit arms. Although actors from Latin America participated in these transnational criminal law regimes, only a few studies on the history of transnational crime have included Latin America, and these mostly cover contemporary developments.[41] Moreover, the theoretical conceptualisation of transnational regimes is still mainly modelled on the blueprint of the Global North and to some extent neglects the equivalent consideration of the Global South as well as the perspective of global legal history.

It seems particularly appropriate to analyse how actors from both the Global North and the Global South responded to transboundary threats and international crimes and developed as well as exchanged normativity, knowledge, and practices of transnational criminal law in a transnational-transatlantic setting. Hence, a fundamental component of the regime concept is the international circulation of law, principles, knowledge and technologies that are applied or agreed by two or more states / jurisdictions and deal with cross-border or transboundary procedures and practices that extended to the national level. For Latin American countries, the domestic incorporation of principles, knowledge and technologies of transnational criminal law constituted a way of belonging to the ›civilised‹ world. In the core period of the formation of transnational criminal law regimes, the transatlantic relations between the newly formed nation-states in Latin America and Europe were framed by the idea of civilisation (knowledge coming from Europe) versus barbarism (the local indigenous cultures in Latin America). However, beyond the deconstruction of such narratives, research needs to clarify the specific motives and interests of Latin American states as well as their role in transnational criminal law regimes and transatlantic activities as vital actors and not mere recipients of European knowledge. Particularly, Latin American devotion to techniques of crime control and criminology (such as statistics and fingerprinting methods) that subsequently gained transnational importance could be considered as an effort to participate in transnational criminal law regimes as ›civilised‹ and active states.

By looking at actors, research can not only consider nation-states but also non-governmental actors, experts and the ›target groups‹ of transnational criminal law activities, such as political dissenters, protesters, anarchists, foreigners / migrants, marginal and indigenous groups. This could also contribute to overcoming the still pre-

40 For Latin America, see the contribution of Elizabeth Gómez Alcorta to this *Focus*; further examples: González / Núñez (2020).

41 Farer (ed.) (1999); Lloyd (2018).

dominant focus on the European nation-state and demonstrate that the historical development of penal law was influenced by other – both non-state and non-European – actors as well. Based on the concept of ›global legal history‹, the outlined project focuses on the transatlantic perspective and the transboundary interaction and exchange between European and Latin American states as well as on the exchange, interdependence and activities of states and non-state ›transnational actors‹ in the sphere of transnational criminal law. A comparative approach is therefore essential for analysing the transboundary practices and activities of transnational / transatlantic actors regarding the direct exchange between at least two states or the participation of individual actors in international discourses, associations and conferences.

As a consequence, the regime concept and the transatlantic approach to the history of transnational criminal law enhance the common approaches of legal history and international law and allow us to integrate the history of transnational policing and ›global governance‹ of crime as well as concepts such as ›critical criminology‹ and ›criminal selectivity‹,[42] the labelling approach, the global circulation of legal knowledge and the transnational creation and dissemination of security threats and narratives.[43] In particular, including the critical criminology, criminal selectivity and labelling approaches into the framework of transnational criminal regimes permits us to examine specific threats, narratives, labels and images of transnational criminals and security created and disseminated in intersected international expert and security discourses.[44] These narratives and labels also had an impact on domestic criminal agencies and the labelling and selection processes that extended to political dissenters, protesters, anarchists, foreigners, migrants, marginal and indigenous groups. In turn, the model of the security dispositif and critical discourse analysis as conceptualised by Foucault[45] is useful for unearthing the underlying transnational / transatlantic power relations and constitutes an essential approach as well, particularly concerning security discourses, security threats and ›securitisation narratives‹ related to (or constituting) processes of (de)securitisation as historical developments of transnational criminal law regimes.

Taking a long-term perspective, studying transnational-transatlantic criminal law regimes allows us to trace the roots of modern global governance of crime and security by investigating if the normativity, knowledge and practices of these regimes were transformed into a ›global regime‹. This, in turn, can help us determine if the modern phenomenon of the global governance of crime is new or can be traced back to the 19th century or even the pre-modern era. It could furthermore contribute to refining the notions of ›global governance‹ and ›globalisation‹ regarding the development and current status of ›power balances‹ and related legal interdependencies between Latin American and European countries.[46] The transnationalisation of criminal law and the formation of transatlantic criminal law regimes in the period between 1870 and 1945 were also characterised by international conflicts, contradictory interests, competing nation-states and historical (dis)continuities. Hence, the formation of transnational criminal law regimes was related to complex and contradictory historical changes and by no means a uniform process of modernisation at the transnational level. The observation of historical transnational-transatlantic criminal law regimes therefore provides an analytical basis to further discuss current worldwide problematics of the global governance of crime. This includes questions such as whether transnational crimes should be addressed exclusively from an international or criminological perspective; whether countries that are not affected by a particular transnational crime should be compelled to pass legislation and enforce policies to deter that offence as part of a global strategy; and which level of collective self-determination of developing countries is appropriate for contesting and even rejecting legislative proposals from international organisations.[47] Studying legal phenom-

42 For an attempt to conceptualise the contemporary prosecution of international crime as a selective criminal law regime, see Cryer (2008).

43 On the history of security regimes, see Daase (2013); Härter (2019a).

44 Vegh Weis (2014).

45 Dillon / Neal (eds.) (2008); for a comparison of Foucault's model of the security dispositif and the regime concept, see: Härter (2013).

46 Jakobi / Wolf (2013).

47 Vegh Weis (2020).

ena from the perspective of historical regimes of normativity thus allows us to understand the genesis of the current state of transnational crime and criminal law, to compare different historical processes with ambiguous outcomes that are still influencing current opportunities, to comprehend *longue durée* processes, to conduct broader and interdisciplinary analyses of legal concepts, to acknowledge cultural diversity and to reflect on the past to avoid the repetition of painful historical events.[48]

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48 Duve (2016) 10.

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